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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,028	08/01/2003	Roger Walmsley	3501	4717

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PEDERSEN & COMPANY, PLLC  
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BOISE, ID 83701

EXAMINER

MACARTHUR, VICTOR L

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/633,028

Applicant(s)

WALMSLEY, ROGER

Examiner

Victor MacArthur

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 10, 12 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is unclear how the fence members can be “pivotable relative to the rails in the fully assembled fencing” (line 2-3 of claim 1) since any pivoting of the fence members results in a non-fully assembled state of the fencing (emphasis added). Claims 10, 12 and 16 are similarly rejected.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 and 13, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bisch (U.S. Patent 5,873,564).

Claim 1. Bisch discloses (figs.13, 16, 17, 19) a vertical fencing comprising a pair of rails (100, 200) and a plurality of fence members (102, 104) attached thereto, at least one of the rails having a recess (recess within 200), in which the fence members are tubular, and in which each

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fence member carries a resiliently-biased projection (218) which is engageable with the recess.

Bisch discloses that the fence members can be of a circular cross section (col.1, ll.60-65) in which case the fence members would inherently be pivotable relative to the rails in the fully assembled state (in as much as the applicant's invention is).

Claim 2. Bisch discloses that the fence member has a longitudinal axis (running from top to bottom), and in which the projection engages the recess to limit movement of the fence member parallel to the longitudinal axis.

Claim 3. Bisch discloses that the fence member has a longitudinal axis (running from top to bottom), and in which the projection engages the recess to limit rotation (via friction) of the fence member about the longitudinal axis (as seen in fig.2).

Claim 4. Bisch discloses that at least one of the rails comprises a channel section (channel 202).

Claim 5. Bisch discloses that the channel section includes an in turned part (30 as seen in figure 5), and in which the recess is provided by a notch (notch between 30 as seen in figure 5) in the in turned part.

Claim 6. Bisch discloses that the channel section includes an in turned part (30 as seen in figure 5), and in which the recess is provided by a hole (hole surrounded by 30 which receives 18 as seen in fig.5) in the in turned part.

Claim 7. Bisch discloses a spring clip (210), and in which the resiliently biased projection is provided by a part of the spring clip.

Claim 8. Bisch discloses that the spring clip is located within the fence member.

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Claim 9. Bisch discloses that the fence members and rails lie substantially in a plane, and in which the projection has a longitudinal axis, the axis being substantially perpendicular to the plane (as seen in figure 19).

Claim 10. Bisch discloses all of the claim 10 limitations present in claim 1. Furthermore, the Bisch fence member pivots relative to the at least one of the rails about the longitudinal axis of the projection (when acted upon by a rotational force great enough to overcome the frictional force of element 218) in as much as the applicants structure does.

Claim 11. Bisch discloses that one of the rails has a further recess (108) and in which the fence members each carry a fixed peg (118), the recess (202) of one of the rails engaging the projection (218) and the further recess (108) of the other rail engaging the fixed peg (118).

Claims 13 and 14. Bisch discloses that at least one of the pair of rails has an opening (opening running through 100 from left to right as seen in figure 13) through which a part of a fence member (top part) can project, the opening being elongated (from left to right) to permit (in that it does not prevent) pivoting movement of the fence member relative to the rail.

Claim 16. Bisch discloses all of the claim 16 limitations that are present in claim 1. Furthermore, Bisch discloses that at least one of the pair of rails has an opening (opening running through 100 from left to right as seen in figure 13) through which a part of a fence member (top part) can project, the opening being elongated (from left to right) to permit (in that it does not prevent) pivoting movement of the fence member relative to the rail.

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Claims 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Spescha (U.S. Patent 2,808,233).

Claim 12. Spescha discloses (figs. 1-9) a vertical fencing comprising a pair of rails (3, 4) and a plurality of fence members (2) attached thereto, the fence members being pivotable relative to the rails in the fully assembled fencing (in as much as the applicant's structure is), at least one of the rails having a recess (bottom 11), in which the fence members are tubular, each fence member carrying a resiliently-biased projection (bottom 10) which is engageable with the recess, one or both of the rails having a further recess (top 11), the fence members each carrying a fixed peg (top 10), the recess of one of the rails (4) engaging the projection and the further recess of the other rail (3) engaging the fixed peg in which the further recess comprises a notch (33) and an extension thereof (extension between 33), the extension being provided to permit rotation of the fence member so that the fixed peg can engage the notch.

Claim 15. Spescha discloses that at least one (3) of the pair of rails has an opening (opening running through 3 from left to right as seen in figure 7) through which a part (top part) of a fence member can project, the opening being elongated (from left to right) to permit pivoting movement of the fence member relative to the rail.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

Applicant's amendment (which narrows the scope by deletion of "means" throughout the claims and adds new claims 13-16) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
VLM  
September 15, 2004



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600